



Agricultural Marketing Service

7 CFR Part 1207

[Document Number AMS-SC-21-0032]

Amendments to the United States Potato Board Membership and Assessment

Methods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on amendments to the Potato Research and Promotion Plan (Plan) as recommended by the National Potato Promotion Board (Board) and the Secretary of the U.S. Department of Agriculture (USDA). The Board administers the Plan with oversight provided by USDA's Agricultural Marketing Service (AMS). The Board recommends changing approved sources of potato production data used to determine the number of Board seats, expanding payment methods used to remit assessments to include electronic submission, and updating the table of Harmonized Tariff Schedule of the United States (HTS) codes and assessment rates for imported potatoes and potato products. Finally, proposed amendments would insert new language eliminating the need to amend the Plan just to update the list of relevant HTS codes.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. All comments must be submitted through the Federal e-rulemaking portal at: <http://www.regulations.gov> and should reference the document number, date, and page number of this issue of the *Federal Register*. Comments submitted in response to this proposed rule will be included in the rulemaking record and will be made available

to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the Internet at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Stacy Jones King, Marketing Specialist, Promotion and Economics Division, Specialty Crop Program, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 1406-S, Washington, DC 20250-0244; telephone: (202) 720-4140; or electronic mail: Stacy.JonesKing@usda.gov.

SUPPLEMENTARY INFORMATION:

This proposal affecting the Plan (7 CFR part 1207) is authorized under the Potato Research and Promotion Act (Act) (7 U.S.C. 2611-2627).

Executive Orders 12866 and 13563

USDA is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 13175

This action has been reviewed in accordance with requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about

proposed changes to regulations will be shared during an upcoming quarterly call, and tribal leaders will be informed about proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to this proposed change to the Plan.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Pursuant to the Congressional Review Act (5 U.S.C. § 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. § 804(2).

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 311 of the Act (7 U.S.C. 2620), a person subject to a plan may file a petition with USDA stating that such plan, any provision of such plan, or any obligation imposed in connection with such plan, is not in accordance with law and request a modification of such plan or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after date of the entry of USDA's final ruling.

Background

This proposed rule invites comments on proposed amendments to approved sources of potato production data used to determine the number of Board seats, to which each State is entitled. Additionally, amendments would expand payment methods used to remit assessments to include electronic submission and update the table of HTS codes

and assessment rates for imported potatoes and potato products. Finally, proposed amendments would insert new language to avoid future amendments to the Plan in the event that HTS numbers subject to assessment reflected in the table are changed and such changes are merely replacements of previous numbers.

Data Sources for Board Membership Recommendation

The Plan became effective on March 9, 1972. Section 1207.320(b) of the Plan provides the formula used to determine how many Board member seats each State is entitled. Under the Plan, every State is eligible to have a Board representative and additional members based on potato production in that State. For each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one additional member.

The Plan states that total annual potato production must come from the “latest Crop Production Annual Summary Report issued by the Crop Reporting Board, U.S. Department of Agriculture.” *See* § 1207.320(b). The Crop Production Annual Summary Report is currently issued by NASS.

In March 2020, USDA’s NASS and AMS communicated to the Board that NASS would no longer collect potato production data for the following ten states: Alaska, Illinois, Kansas, Maryland, Missouri, Montana, New Jersey, New York, North Carolina, and Virginia. In June 2020, NASS estimated the cost of collecting data at \$80,000 per year. The Board considered this estimate and concluded that the cost to collect this information would exceed the value of assessments collected from the aforementioned ten States. Subsequently, the Board decided to temporarily freeze the number of seats for those ten States at their 2019 quantities so that the Board could move forward with assigning Board member seats for 2020 nominations.

At a July Board 2020 meeting, Board staff presented to the Board’s Administrative Committee a summary of constraints related to the collection of

production data. During a January 2021 meeting, Board staff further discussed the need to update the Plan with the Administrative Committee and made the recommendation to amend the Plan during a subsequent meeting on March 9, 2021.

The Board recommended to use production data from audited assessment reports in place of NASS data for states not included in NASS reports.

As indicated in Table 1, this amendment would allow the Board to use audited assessment data in instances where NASS data is unavailable.

Table 1. NASS Production and Board Production (Board) and number of producer members by state.

State	NASS 2016 (cwt)	NASS 2017 (cwt)	NASS 2018 (cwt)	Board 2018 (cwt)	2016-2018 NASS Avg. (1,000 cwt)	2016- 2018 NASS & Board Avg. (1,000 cwt)	2020 NASS Number of Members (cwt/ 5,000)	2020 NASS & Board Number of Members (cwt/ 5,000)
Alabama (AL)	-	-	-	70	-		1	1
Illinois(IL)	2,812	3,321	2,850	394	2,994	2,176	1	1
Kansas(KS)	1,260	1,558	1,419	483	1,412	1,100	1	1
Maryland (MD)	-	913	510	389	474	651	1	1
Missouri (MO)	2,410	2,423	1,665	1,012	2,166	1,948	1	1
Montana(MT)	3,685	3,774	3,830	149	3,763	2,536	1	1
New Jersey (NJ)	-	600	530	125	377	363	1	1
New York (NY)	3,552	4,032	4,118	899	3,901	2,828	1	1
North Carolina (NC)	2,992	3,473	2,318	1,702	2,928	2,722	1	1
Virginia (VA)	1,189	1,193	1,034	450	1,139	944	1	1

Assessment Payment Options Recommendation

The Board also recommended to include “electronic submission” in the list of allowable methods of payment to remit assessments and to remove references to drafts and money orders.

The Board staff stated that allowing electronic submission (e.g. bank transfer payments (Automated Clearing House) (ACH) or wire transfer payments) of assessments would improve and streamline operations by lowering the cost of processing mailed

checks. The Board recommended removing references to drafts and money orders as handlers no longer use these forms of payment.

Harmonized Tariff Schedule Table Recommendation

Section 1207.510(b)(3) of the Plan contains a table that reflects outdated HTS codes, assessment rates, and potato categories for imports.

Pursuant to Section 1207.327(b) of the Plan, the Board has the authority to recommend to the Secretary amendments to this Plan. To reduce Federal Register publication costs associated with amending the Plan to update HTS codes, the Board recommended removing the HTS chart from the Plan and replacing the HTS chart with a reference to HTS codes, assessment rates and potato categories for imports.

The Secretary has chosen to adopt and propose an alternative approach that includes amending the Plan by updating the current HTS chart, and inserting new language to avoid future amendments to the Plan in the event that an HTS number subject to assessment reflected in the table is changed and such change is merely a replacement of a previous number. This proposed change will reduce future Federal Register publication costs associated with amending the Plan to remain consistent with future updated HTS numbers that have no impact on the description of potato involved.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than \$1 million and

small agricultural service firms (handlers) as those having annual receipts of no more than \$30 million.

According to the Board, there were 60 importers, 955 handlers, and approximately 2,500 producers and handlers in 2020.

Most producers would be classified as small agricultural production businesses under the criteria established by the SBA (no more than \$1 million in annual potato sales). According to the 2017 Census of Agriculture, published by NASS in 2019, there were 16,554 potato farms with bearing acreage. Of these 16,554 farms, 1,417 sold potatoes whose annual market value met or exceeded \$1 million. Based on these figures, 91 percent of U.S. potato producers are considered to be “small” under the SBA standards. USDA recognizes the potential inclusion in its count of “small” farms those farms whose sales of potatoes were exactly \$1 million in market value; however, USDA lacks the data to remedy this, and the number of farms who meet this criterion is likely quite small.

This proposal would amend §§ 1207.320, 1207.502, 1207.510 and 1207.513.

Regarding the economic impact of this proposed rule on affected entities, this action would impose no costs on producers, handlers, or importers. Proposed changes are administrative in nature and would allow the Board to effectively carry out the requirements of the Plan.

In response to the discontinuation of NASS collection of potato production data for 10 States, USDA considered the following alternatives to the proposed amendment: take no action and hold constant production level figures for the 10 States to the final year for which NASS published data; or, fund NASS’ collection of data for the 10 States using Board resources. The first of these alternatives would result in the potential for Board representation that is inconsistent with domestic production. Potato production fluctuates significantly from year to year. Consequently, distribution of Board member

seats based on a fixed production figure would prevent the Board from adequately reflecting changes that occur in the industry over time; therefore, this is not a viable alternative. The second alternative would result in an annual cost to the Board of approximately \$80,000 to restore the collection of potato production data by NASS for the 10 States which it has omitted. This amount exceeds the total value of assessments collected from these 10 States, making this alternative not viable.

In accordance with OMB regulation [5 CFR Part 1320], which implements information collection requirements imposed by the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 et seq.], there are no new requirements contained in this rule.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services.

Regarding outreach efforts, all Board meetings were open to the public and interested persons were invited to participate and express their views. No concerns were raised.

We have performed this initial RFA regarding the impact of this proposed action on small entities and we invite comments concerning potential effects of this action on small businesses.

While this proposed rule as set forth below has not yet received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Imports, Potatoes, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1207 is proposed to be amended as follows:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1207 continues to read as follows:

Authority: 7 U.S.C. 2611-2627; 7 U.S.C. 7401.

2. Revise § 1207.320(b) to read as follows:

§1207.320 Establishment and membership.

* * * * *

(b) Producer membership on the Board shall be determined on the basis of potato production reported in the latest Crop Production Annual Summary Report issued by the National Agricultural Statistics Service of the U.S. Department of Agriculture. If a State's potato production data is not provided by the National Agricultural Statistics Service, the Board may use an alternative data source that reliably reflects potato production in the United States. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, for each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one member. However, each State shall initially be entitled to at least one member.

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3. Revise § 1207.502(a) to read as follows:

§1207.502 Determination of membership.

(a) Pursuant to §1207.320 and the recommendation of the Board, annual producer memberships on the Board shall be determined on the basis of the average potato production during the 3 preceding years in each State as set forth in the Crop Production Annual Summary Reports issued by the National Agricultural Statistics Service of the U.S. Department of Agriculture. If a State's potato production data is not provided by the National Agricultural Statistics Service, the Board may use an alternative data source that reliably reflects potato production in the United States.

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4. Revise §1207.510 (b)(3) to read as follows:

§1207.510 Levy of assessments.

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(b) * * *

(3) The Harmonized Tariff Schedule (HTS) categories and assessment rates on imported tablestock potatoes and frozen or processed potatoes for ultimate consumption by humans and on imported seed potatoes are listed in the following table. In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the potatoes, assessments will continue to be collected based on these new numbers.

Table 2 to Paragraph (b)(3)

Tablestock potatoes, frozen or processed potatoes, and seed potatoes	Assessment
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	Cents/cwt	Cents/kg
0701.10.0020	3.0	0.066
0701.10.0040	3.0	0.066
0701.90.1000	3.0	0.066
0701.90.5015	3.0	0.066
0701.90.5025	3.0	0.066
0701.90.5035	3.0	0.066
0701.90.5045	3.0	0.066
0701.90.5055	3.0	0.066
0701.90.5065	3.0	0.066
0710.10.0000	6.0	0.132
2004.10.4000	6.0	0.132
2004.10.8020	6.0	0.132
2004.10.8040	6.0	0.132
2005.20.0070	4.716	0.104
0712.90.3000	21.429	0.472
1105.10.0000	21.429	0.472
1105.20.0000	21.429	0.472
2005.20.0040	21.429	0.472
2005.20.0020	12.240	0.27
1108.13.0010	27.0	0.595

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5. Revise §1207.513 (c)(1) to read as follows:

§1207.513 Payment of assessments.

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(c) *Payment directly to the Board.* (1) Except as provided in paragraphs (b) and (d) of this section, each designated handler or importer shall remit assessments directly to

the Board by check or electronic payment. Checks are to be made payable to the National Potato Promotion Board or the Board's official doing business as name. Payment is due not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

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Agricultural Marketing Service.

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